

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

**ESTATE OF MARJORY GAIL THOMAS
OSBORN-VINCENT,**

Plaintiff,

v.

**AMERIPRISE FINANCIAL SERVICES,
INC. et al.,**

Defendants.

No. 3:16-cv-02305-YY

OPINION AND ORDER

MOSMAN, J.,

On January 3, 2019, Magistrate Judge Youlee Yim You issued her Findings and Recommendation (F&R) [134], recommending that I GRANT in part and DENY in part Plaintiff's Motion to Dismiss Defendants' Counterclaim and Strike Defendants' Counterclaim and Affirmative Defenses [96]. Neither party filed objections to the F&R.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal

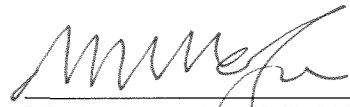
conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

CONCLUSION

Upon review, I agree with Judge You's recommendation and I ADOPT the F&R [134] as my own opinion. Plaintiff's motion to dismiss or strike Defendants' counterclaim for attorney fees [96] is DENIED. Plaintiff's motion to strike Defendants' affirmative defenses [96] is GRANTED in that references to ORS 124.110(1)(b) in paragraphs 51(b)(2) and (4) of the Answer [90] are stricken and is otherwise DENIED.

IT IS SO ORDERED.

DATED this 25 day of February, 2019.


MICHAEL W. MOSMAN
Chief United States District Judge